
TITLE 760 DEPARTMENT OF INSURANCE

Proposed Rule
LSA Document #12-464

DIGEST

Adds [760 IAC 1-53-1.1](#) concerning definitions. Amends [760 IAC 1-53-3](#) regarding standards that the commissioner may consider to determine whether an insurer might be deemed to be hazardous to the policyholders, creditors, or general public. Amends [760 IAC 1-53-4](#) regarding the commissioner's authority to make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates. Amends [760 IAC 1-53-5](#) regarding orders and hearings. Amends [760 IAC 1-53-6](#) regarding review of orders. Repeals [760 IAC 1-53-1](#). Makes technical corrections. Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[760 IAC 1-53-1](#); [760 IAC 1-53-1.1](#); [760 IAC 1-53-2](#); [760 IAC 1-53-3](#); [760 IAC 1-53-4](#); [760 IAC 1-53-5](#); [760 IAC 1-53-6](#)

SECTION 1. [760 IAC 1-53-1.1](#) IS ADDED TO READ AS FOLLOWS:

[760 IAC 1-53-1.1](#) Definitions

Authority: [IC 27-1-3-7](#)

Affected: [IC 27-1-1-1](#)

Sec. 1.1. The following definitions apply throughout this rule:

(1) "Commissioner" means the commissioner of the department of insurance.

(2) "NAIC" means the National Association of Insurance Commissioners.

(Department of Insurance; [760 IAC 1-53-1.1](#))

SECTION 2. [760 IAC 1-53-2](#) IS AMENDED TO READ AS FOLLOWS:

[760 IAC 1-53-2](#) Purpose

Authority: [IC 27-1-3-7](#)

Affected: [IC 27-1-1-1](#)

Sec. 2. (a) This rule sets forth standards ~~which that~~ may be used by the commissioner ~~of the department of insurance~~ to identify and to correct insurers found to be in such condition as to render the continuance of their business hazardous to the public or to holders of their policies or certificates of insurance.

(b) This rule shall not be interpreted to limit the powers granted to the commissioner ~~of the department of insurance~~ by any laws or parts of laws of this state, nor shall this rule be interpreted to supersede any laws or parts of laws of this state.

(Department of Insurance; [760 IAC 1-53-2](#); filed Aug 24, 1993, 5:00 p.m.: 17 IR 8; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; readopted filed Nov 27, 2007, 4:01 p.m.: [20071226-IR-760070717RFA](#))

SECTION 3. [760 IAC 1-53-3](#) IS AMENDED TO READ AS FOLLOWS:

[760 IAC 1-53-3](#) Standards

Authority: [IC 27-1-3-7](#)

Affected: [IC 27-1-1-1](#)

Sec. 3. The following standards, either singly or a combination of two (2) or more, may be considered by the commissioner of the department of insurance to determine whether the continued operation of any insurer transacting insurance business in this state might be deemed to be hazardous to the policyholders, creditors, or general public. The commissioner of the department of insurance may consider the following:

- (1) Adverse findings reported in financial condition and market conduct examination reports, **audit reports, and actuarial opinions, reports, or summaries.**
- (2) The ~~National Association of Insurance Commissioners~~ **NAIC** Insurance Regulatory Information System and its related **other financial analysis solvency tools and reports.**
- ~~(3) The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus.~~
- ~~(4) Whether the insurer's asset portfolio when viewed in light of current economic conditions is of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature.~~
- ~~(5) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer.~~
- (3) Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts.**
- (4) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurers.**
- ~~(6)~~ **(5) Whether the insurer's operating loss in the last twelve (12) month period or any shorter period of time, including, but not limited to:**
 - (A) net capital gain or loss;
 - (B) change in nonadmitted assets; and
 - (C) cash dividends paid to shareholders;**is greater than fifty percent (50%) of the insurer's remaining surplus as regards policyholders in excess of the minimum required.**
- (6) Whether the insurer's operating loss in the last twelve (12) month period or any shorter period of time, excluding net capital gains, is greater than twenty percent (20%) of the insurer's remaining surplus as regards policyholders in excess of the minimum required.**
- (7) Whether any affiliate, subsidiary, or a reinsurer, obligor, or any entity within the insurer's insurance holding company system is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations, and which in the opinion of the commissioner may affect the solvency of the insurer.**
- (8) Contingent liabilities, pledges, or guaranties which that either individually or collectively involve a total amount which, that, in the opinion of the commissioner, of the department of insurance, may affect the solvency of the insurer.**
- (9) Whether any controlling person of an insurer is delinquent in the transmitting to, or payment of, net premiums to such the insurer.**
- (10) The age and collectability collectability of receivables.**
- (11) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in such position.**
- (12) Whether management of an insurer has:**
 - (A) failed to respond to inquiries relative to the condition of the insurer; or has**
 - (B) furnished false and misleading information concerning an inquiry.**
- (13) Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner.**
- ~~(13)~~ **(14) Whether management of an insurer has:**
 - (A) filed any false or misleading sworn financial statement; or has**
 - (B) released a false or misleading financial statement to lending institutions or the general public; or**
 - (C) made a false or misleading entry or has omitted an entry of material amount in the books of the insurer.**
- ~~(14) Whether management of an insurer has made a false or misleading entry or has omitted an entry of material amount in the books of the insurer.~~

(15) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner.

(16) Whether the ~~company~~ **insurer** has experienced or will experience in the foreseeable future cash flow ~~and/or~~ or liquidity problems.

(17) Whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles, and standards of practice.

(18) Whether management persistently engages in material under-reserving that results in adverse development.

(19) Whether transactions among affiliates, subsidiaries, or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature.

(20) Any other finding determined by the commissioner to be hazardous to the insurer's policyholders, creditors or general public.

(Department of Insurance; [760 IAC 1-53-3](#); filed Aug 24, 1993, 5:00 p.m.: 17 IR 8; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; readopted filed Nov 27, 2007, 4:01 p.m.: [20071226-IR-760070717RFA](#))

SECTION 4. [760 IAC 1-53-4](#) IS AMENDED TO READ AS FOLLOWS:

[760 IAC 1-53-4](#) Authority of the commissioner

Authority: [IC 27-1-3-7](#)

Affected: [IC 27-1-1-1](#)

Sec. 4. For the purpose of making a determination of an insurer's financial condition under this rule, the commissioner ~~of the department of insurance~~ may:

(1) disregard any credit or amount receivable resulting from transactions with a reinsurer ~~which~~ **that** is insolvent, impaired, or otherwise subject to a delinquency proceeding;

(2) make appropriate adjustments **including disallowance** to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates **consistent with:**

(A) the NAIC Accounting Practices and Procedures Manual;

(B) state laws; and

(C) state rules;

(3) refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; and

(4) increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve (12) month period.

(Department of Insurance; [760 IAC 1-53-4](#); filed Aug 24, 1993, 5:00 p.m.: 17 IR 9; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; readopted filed Nov 27, 2007, 4:01 p.m.: [20071226-IR-760070717RFA](#))

SECTION 5. [760 IAC 1-53-5](#) IS AMENDED TO READ AS FOLLOWS:

[760 IAC 1-53-5](#) Order of the commissioner

Authority: [IC 27-1-3-7](#)

Affected: [IC 4-21.5-4-3](#); [IC 4-21.5-4-4](#); [IC 27-1-1-1](#); [IC 27-9-2-1](#)

Sec. 5. (a) If the commissioner ~~of the department of insurance~~ determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders or the general public, then the commissioner ~~of the department of insurance~~ may, in addition to any other action the commissioner ~~of the department of insurance~~ may take under [IC 27-9-2-1](#)(b) or any other statute or rule, issue an order requiring the insurer to do the following:

(1) Reduce the total amount of present and potential liability for policy benefits by reinsurance.

(2) Reduce, suspend, or limit the volume of business being accepted or renewed.

(3) Reduce general insurance and commission expenses by specified methods.

(4) Increase the insurer's capital and surplus.

- (5) Suspend or limit the declaration and payment of dividends by an insurer to its stockholders or to its policyholders.
- (6) File reports in a form acceptable to the commissioner of the department of insurance concerning the market value of an insurer's assets.
- (7) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner of the department of insurance deems necessary.
- (8) Document the adequacy of premium rates in relation to the risks insured.
- (9) File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners **NAIC** or in such format as promulgated by the commissioner. of the department of insurance.
- (10) Correct corporate governance practice deficiencies and adopt and utilize governance practices acceptable to the commissioner.**
- (11) Provide a business plan to the commissioner in order to continue to transact business in the state.**
- (12) Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer.**

If the insurer is a foreign insurer, the order of the commissioner of the department of insurance may be limited to the extent provided by statute.

(b) Any insurer subject to an order under subsection (a) may request a hearing to review that order as permitted under [IC 4-21.5-4-4](#). **The notice of hearing shall be served upon the insurer under [IC 4-21.5-4-3](#). The notice of hearing shall include the following information:**

- (1) The time and place of hearing.**
- (2) The conduct, condition, or ground upon which the commissioner based the order.**

Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than ten (10) days nor more than thirty (30) days after notice is served. The hearing shall be held in Marion County. The commissioner shall hold all hearings under this subsection privately, unless the insurer requests a public hearing, in which case the hearing shall be public.

(Department of Insurance; [760 IAC 1-53-5](#); filed Aug 24, 1993, 5:00 p.m.: 17 IR 9; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; readopted filed Nov 27, 2007, 4:01 p.m.: [20071226-IR-760070717RFA](#))

SECTION 6. [760 IAC 1-53-6](#) IS AMENDED TO READ AS FOLLOWS:

[760 IAC 1-53-6](#) Review of order

Authority: [IC 27-1-3-7](#)

Affected: [IC 4-21.5-3](#); [IC 27-1-1-1](#)

Sec. 6. Any order or decision of the commissioner of the department of insurance shall be subject to judicial review as permitted by [IC 4-21.5-3](#) et seq. **at the instance of any party to the proceedings whose interests are substantially affected.**

(Department of Insurance; [760 IAC 1-53-6](#); filed Aug 24, 1993, 5:00 p.m.: 17 IR 10; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; readopted filed Nov 27, 2007, 4:01 p.m.: [20071226-IR-760070717RFA](#))

SECTION 7. [760 IAC 1-53-1](#) IS REPEALED.

[Notice of Public Hearing](#)

Posted: 10/24/2012 by Legislative Services Agency
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